

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4111 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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ANANDRAM HAKUMATRAI POPTAANI

Versus

STATE OF GUJARAT  
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Appearance:

MS ARCHANA AMIN, Advocate for  
MR YOGESH S LAKHANI for Petitioners  
MR PREMAL JOSHI, ASSTT.GOVERNMENT PLEADER for  
Respondent No. 1, 2, 3, 4  
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CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 08/12/2000

ORAL JUDGEMENT

1. The petitioners have challenged the orders cancelling the entries Nos. 378 and 379, which were

certified on 19.2.1986 in the revenue records of village Gajadi of Jodiya Taluka in Jamnagar, which were made pursuant to the sale-deeds said to have been executed in favour of the petitioners.

2. According to the petitioners they had purchased the agricultural land from Survey No. 24 admeasuring two acres each under the registered sale-deeds, copies of which are at Annexure "B" collectively. It is their grievance that after a lapse of more than three and a half years, these entries were cancelled invoking the provisions of Section 54 of The Saurashtra Gharkhed, Tenancy Settlement and Agricultural Lands Ordinance, 1949. The order was made on 20.9.1989 by the Assistant Collector, Jamnagar, taking the matter in suo-motu revision. The appeal which was preferred by the petitioners to the Collector was rejected. That order was challenged before the State Government and the State Government by its order dated 23rd October, 1991, confirmed the orders of the lower authorities rejecting the revision application of the petitioners.

3. From the order dated 23rd October, 1991, passed by the State Government, it appears that the State Government rejected the contention of the petitioners that the suo-motu powers were exercised after a lapse of three years and seven months, on the ground that the matter pertained to the exercise of powers under Rule 108(6) of the Bombay Land Revenue Rules and therefore, the decision of the Supreme Court in State of Gujarat Vs. Raghav Natha, reported in 10 G.L.R 992 was not applicable. The State Government also drew adverse inference from the fact that the petitioners had, after migration, chosen to reside at Rajkot. It was observed that mere cancellation of the entry made in the revenue record was not enough and a direction was given to make a further entry that the possession of the land, which was with the petitioners, was unauthorised. This was so done in the process of rejecting the petitioners' revision application.

4. Under Section 54 of the said Ordinance, transfer of land to non-agriculturists is barred, except when permission is given by the Collector or an authorised officer for such transfer. In the Explanation, it is provided that the term "agriculturist" shall include landless labourers and maldaris employed in agricultural operations. Section 2(c) defines "agriculturist" so as to mean person who cultivates the land personally and the expression "to cultivate personally" is defined in clause (g) of Section 2 so as to mean to cultivate on one's own

account by one's own labour, or by the labour of any member of one's family, or by servants on wages payable in cash or kind, but not crop-shares or by hired labour, under one's personal supervision or of any member of one's family. It appears that the said definition of "agriculturist" was not kept in view by the concerned authorities and undue emphasis was laid on the petitioners' father being agriculturist or not in the pre-partition days. Assuming that the authority had in the proceedings regarding cancellation of the entries in the revenue record had any such jurisdiction to decide whether the petitioners were agriculturists or not, the proper question to address was whether the petitioners were cultivating the land personally and were agriculturists as defined in the aforesaid provisions of the Ordinance.

5. Admittedly, the authorities were acting in context of Rule 108 of The Bombay Land Revenue Rules. This Court, in context of the said provision, has in the case of Evergreen Apartment Co-op. Housing Society Vs. Special Secretary, Revenue Department, Gujarat State, reported in 32(1) G.L.R 113, while considering the contentions against cancellation of entry made in the revenue record, in paragraph 12, held as under:-

"Ordinarily when a transfer of property takes place by a registered document, an entry is effected in the revenue record and it is certified by the Mamlatdar after making necessary inquiries. If there is any dispute regarding mutation, the dispute has to be entered in the register of the disputed cases and then such disputes are to be disposed of by the Mamlatdar. Under sub-rule (5) of Rule 108 of the Rules, the aggrieved party can prefer an appeal within 60 days from the date of the service of the order. The State Government has power to call for and examine the record of any enquiry or the proceedings of any subordinate Revenue Officer and to review the same under sub-rule (6) of the Rules." xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx "It is quite possible that an officer of the Revenue Department may be occupying different capacities under different enactments. That, however, would not empower him to exercise any powers under one enactment while proceeding under another enactment. So far as the proceedings under Rule 108 of the Rules, popularly known as RTS

proceedings, are concerned, it is well settled that the entries made in the revenue records have primarily a fiscal value and they do not create any title. Such mutations have to follow either the documents of title or the orders passed by competent authorities under special enactments. Independently the Revenue Authorities, as mentioned in Rule 108 of the Rules, cannot pass orders of cancelling the entries on an assumption that the transaction recorded in the entry are against the provisions of a particular enactment. Whether the transaction is valid or not has to be examined by the competent authority under the particular enactment by following the procedure prescribed therein and by giving an opportunity of hearing to the concerned parties likely to be affected by any order that may be passed."

6. The ratio of the decision in Evergreen Apartment Vs. Spl. Secretary (supra) was followed by the High Court in Kalpataru Land Development Pvt.Ltd. Vs. Assistant Collector, Surat, reported in 37(2) GLR 600.

7. In the present case, while exercising powers under Rule 108 of the Rules, the concerned authorities have virtually decided the matter under the provisions of the said Ordinance. Such a course is contrary to the ratio of the decision of this Court in Evergreen Apartment's case (supra). The power was so exercised more than three and a half years after the certification of the entries. Under Rule 108(6), the State Government was empowered to satisfy itself "as to the regularity of such proceedings and as to the legality and propriety of any decision or order passed in such proceedings". Therefore, the entire enquiry in revisional power had to proceed under the Bombay Land Revenue Rules and not under any enactments like the said Ordinance. Whether the transaction was valid or not, was required to be examined by the competent authority under the said Ordinance by following the procedure prescribed therein and by giving an opportunity of hearing to the concerned parties likely to be affected by such order. In this view of the matter, the impugned order passed by the State Government on 23.10.1991 which is at Annexure "E" to the petition cannot be sustained and is hereby set aside. The matter is remanded to the revisional authority for a fresh decision after hearing the concerned parties and keeping in view the ratio of the decision of this Court in

Evergreen Apartment's case (supra). Rule is made  
absolute accordingly with no order as to costs.

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